

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**CNR OPERATIONS, LLC, and CESWD 1,
LLC,**

Plaintiffs,

v.

**HBC WHITEWATER, LLC, HBC WATER
RESOURCES, LP, KENT MCNELLIE,
SCOTT STABLER, BEN R. DOUD, PETER
BRODSKY, JOE COLONNETTA, PETER
BENZ, and JERRY BANTA,**

Defendants.

CIVIL ACTION NO.

**NOTICE OF REMOVAL OF CASE PENDING IN
STATE COURT**

Defendants HBC Whitewater, LLC, Kent McNellie, Peter Brodsky, and Joe Colonna, by and through their undersigned attorneys, pursuant to 28 U.S.C. § 1446(a) and § 1452(a) and Bankruptcy Rule 9072(a), provide notice of the removal of the case captioned *CNR Operations, LLC v. HBC Whitewater, LLC*, No. DC-18-09957, pending in the 101st District Court of Dallas County, Texas, to the United States District Court for the Northern District of Texas, as follows:

I. FACTUAL BACKGROUND

1. A group of six entities (SWD, EFSWD I, Six Pack Energy, PH Grinders, CESWD 1, and SMG Holdings) owned working interests in a saltwater disposal well (“SWD”) known as Cheapside SWD, located in Gonzales County, Texas. Whitewater/Evergreen Operations, LLC (“WEO”) owned working interests in two other saltwater disposal wells known as Fashing SWD and Fowlerton SWD, located in Atascosa County and La Salle County, Texas, respectively.

2. These entities are referred to as “Sellers” in the parties’ February 14, 2014 Purchase and Sale Agreement (“PSA”). Cheapside SWD, Fashing SWD, and Fowlerton SWD are referred to collectively as the “Wells.”

3. Plaintiff CNR Operations, LLC (“CNR”) and Defendant Ben Doud owned Whitewater Resources LLC, the operator of the Wells.

4. On February 14, 2014, the Sellers entered into a Purchase and Sale Agreement (“PSA”) with HBC, pursuant to which HBC acquired its interest in the salt water disposal wells. The PSA contained provisions related to an adjustment to the value of the wells following the sale and, following the adjustment, payment of a true-up amount to HBC.

5. Following the determination of the adjusted value of the wells, HBC made demand upon Sellers for payment of the additional “true up” obligation, in the amount of \$17,827,430.00. However, Sellers did not satisfy and pay to HBC the “true up” obligation, in the amount of \$17,827,430.00.

6. On March 11, 2016, HBC filed its lawsuits against Sellers, including CESWD, and against various other entities and individuals, including CNR Operations and Clayton Reaser, individually (“Reaser”), in Cause No. DC-16-02848, in the 68th Judicial District Court, Dallas County, Texas (the “Original Lawsuit”). Therein, HBC alleged that the Sellers (and other entities) failed to make the required “true up” payment to HBC pursuant to and in accordance with the terms of the PSA.

7. In or around May 2016, HBC made a demand for arbitration under the terms of and pursuant to the PSA.

8. On or about September 15, 2016, HBC dismissed, *inter alia*, CNR Operations and Reaser from the Original Lawsuit, and, in connection therewith, HBC and others, including CNR Operations and Reaser, executed that certain Tolling Agreement.

9. On or about October 13, 2016, HBC and CESWD jointly dismissed their claims asserted against one another in the Original Lawsuit, and, in connection therewith, executed that certain Tolling Agreement.

10. In June 2017, an arbitration award was entered in favor of HBC and against the Sellers, assessing liability for the true-up payment under the Purchase and Sale Agreement. The arbitration award was confirmed and an Agreed Final Judgment was entered by the District Court for the 68th Judicial District of Dallas County, Texas (“Dallas County Court”) on August 24, 2017 (the “Confirmation Litigation”).

11. As an additional means of attempting to collect on its judgment, HBC Whitewater, LLC (“HBC”) filed an Original Petition in the Dallas County Court, Cause No. DC-18-02224 (“HBC Litigation”), against the Debtors, together with Ben Doud, Marilee Doud, Dory Doud, Charles Edwards, Patricia Edwards, Rolling Hills Bank & Trust, Clayton Reaser, Evergreen Water Disposal Services, LLC, CNR Operations, LLC, MDP, LLC, Peter Benz, David Lieberman, Douglas Hockett, Joe Gelchion, Orbinvest Advisors, Ltd., Six Pack Environmental, LLC, FSML Management, LLC, Frascella Capital, SMG Holdings, LLC, and SPE (together the “HBC Litigation Defendants”).

12. The Original Petition alleged claims for fraudulent transfer, aiding and abetting conspiracy, money had and received, request for accounting, constructive trust, and alter ego (together the “Claims”).

13. On May 24, 2018, WEO, SWD, and EFSWD filed voluntary petitions for relief pursuant to Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United

States Bankruptcy Court for the District of Colorado (“Colorado Bankruptcy Court”), Case Nos. 18-14535-KHT, 18-14537-KHT, an 18-14542-KHT respectively.

14. On May 30, 2018, PH Grinders filed its voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code in the Colorado Bankruptcy Court, Case No. 18-14696-KHT.

15. On June 4, 2018, the Colorado Bankruptcy Court entered an Order Granting Motion for Joint Administration, pursuant to which the Debtors are jointly administered under Case No. 18-14535-KHT.

16. On June 11, 2018, WEO, SWD, EFSWD, and PH Grinders filed a Notice of Removal of Case Pending in State Court in which they sought “removal of all claims and causes of action currently pending in the HBC Litigation.”¹

17. On July 30, 2018, CNR and CESWD 1 filed Plaintiffs’ Original Petition & Preservation of Potential Defenses (the “July 30, 2018 Petition”) in *CNR Operations, LLC v. HBC Whitewater, LLC*, No. DC-18-09957, pending in the 101st District Court of Dallas County, Texas. In that petition, CNR and CESWD allege, *inter alia*, that HBC’s ownership and mismanagement of the Wells resulted in lost revenues, profits, and value.

II. LEGAL BASIS FOR REMOVAL

18. 28 U.S.C. § 1452(a) states:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit’s police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

¹ Case 3:18-cv-01492-N, Doc. 1 at 4.

19. Section 1334(b) further provides that the district court shall have original jurisdiction over “all civil proceedings arising under title 11, or arising in or related to cases under title 11.” Section 1334(e) further provides that the district court in which a bankruptcy case is commenced or is pending shall have exclusive jurisdiction over all of the property of the estate.

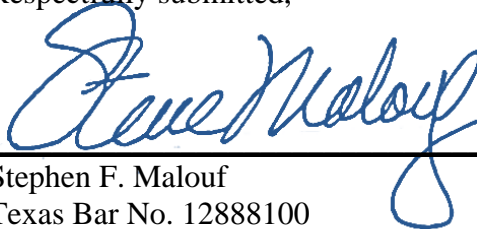
20. Plaintiffs’ claims in the July 30, 2018 Petition are core proceedings over which the bankruptcy court has jurisdiction, as the claims relate to matters concerning the determination, avoidance, and recovery of fraudulent conveyances, the administration of the Debtors’ estates, and the collection of funds for the benefit of all creditors. 28 U.S.C. §157(b)(2)(A),(H), and (O).

21. A copy of this Notice is being served on CNR and CESWD 1 and all other parties in interest in accordance with Fed. R. Bankr. P. 7004 and 9027(b). A copy of this Notice will also be filed in the Dallas County Court.

22. Pursuant to Fed. R. Bankr. P. 9027(a)(1) and Local Civil 81.1 Rule, this Notice is accompanied by the operative pleadings filed in the HBC Litigation and more specifically identified on the index filed herewith.

Dated: September 12, 2018

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Stephen F. Malouf", is written over a horizontal line.

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CAUSE NO. DC-18-09957

CNR OPERATIONS, LLC, and CESWD 1, LLC,

Plaintiffs,

v.

HBC WHITEWATER, LLC, HBC WATER RESOURCES, LP, KENT MCNELLIE, SCOTT STABLER, BEN R. DOUD, PETER BRODSKY, JOE COLONNETTA, PETER BENZ, and JERRY BANTA,

Defendants.

IN THE DISTRICT COURT OF

101ST JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

PLEADING INDEX

1. ORIGINAL PETITION	Filed: 07/30/2018
2. CASE FILING COVER SHEET	Filed: 08/02/2018
3. REQUEST FOR SERVICE	Filed: 08/10/2018
4. CITATION ISSUED – PETER BRODSKY	Filed: 08/10/2018
5. CITATION ISSUED – JERRY BANTA	Filed: 08/10/2018
6. CITATION ISSUED – PETER BENZ	Filed: 08/10/2018
7. CITATION ISSUED – JOE COLONNETTA	Filed: 08/10/2018
8. CITATION ISSUED – BEN DOUD	Filed: 08/10/2018
9. CITATION ISSUED – SCOTT STABLER	Filed: 08/10/2018
10. CITATION ISSUED – KENT MCNELLIE	Filed: 08/10/2018
11. CITATION ISSUED – HBC WATER RESOURCES, LP	Filed: 08/10/2018
12. CITATION ISSUED – HBC WHITEWATER, LLC	Filed: 08/10/2018
13. NOTICE OF FILING OF RULE 11 AGREEMENT	Filed: 08/13/2018

14. ORIGINAL ANSWER OF JERRY BANTA

Filed: 09/06/2018

15. NOTICE OF DISMISSAL FOR WANT OF PROSECUTION DATE

Filed: 09/27/2018

Case Information

DC-18-09957 | CNR Operations, LLCet al vs. HBC Whitewater, LLCet al

Case Number	Court	Judicial Officer
DC-18-09957	101st District Court	WILLIAMS, STACI
File Date	Case Type	Case Status
07/30/2018	OTHER CONTRACT	OPEN

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Events and Hearings

07/30/2018 NEW CASE FILED (OCA) - CIVIL

07/30/2018 ORIGINAL PETITION ▼

PETITION

08/02/2018 CASE FILING COVER SHEET ▼

Civil Case Information Sheet.pdf

08/10/2018 ISSUE CITATION ▼

1. $\text{Pr}(X_1 = 1, X_2 = 1) = \frac{1}{4}$
 2. $\text{Pr}(X_1 = 1, X_2 = 0) = \frac{1}{4}$
 3. $\text{Pr}(X_1 = 0, X_2 = 1) = \frac{1}{4}$
 4. $\text{Pr}(X_1 = 0, X_2 = 0) = \frac{1}{4}$
 5. $\text{Pr}(X_1 = 1) = \frac{1}{2}$
 6. $\text{Pr}(X_2 = 1) = \frac{1}{2}$
 7. $\text{Pr}(X_1 = 1 | X_2 = 1) = \frac{1}{2}$
 8. $\text{Pr}(X_2 = 1 | X_1 = 1) = \frac{1}{2}$
 9. $\text{Pr}(X_1 = 1, X_2 = 1 | X_1 + X_2 = 2) = 1$
 10. $\text{Pr}(X_1 = 1, X_2 = 1 | X_1 + X_2 = 0) = 0$

Notice of Filing of Rule 11 Agreement.pdf

ESERVE bhoge@snlegal.com/TJ.

Anticipated Method

Anticipated Method

Anticipated Method

08/13/2018 CITATION ▼

Anticipated Server
ESERVE

Anticipated Method

08/13/2018 CITATION ▼

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08/13/2018 CITATION ▼

Anticipated Server
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Anticipated Method

08/13/2018 CITATION ▼

Anticipated Server
ESERVE

Anticipated Method

09/06/2018 ORIGINAL ANSWER - GENERAL DENIAL ▼

ORIGINAL ANSWER

09/27/2018 DISMISSAL FOR WANT OF PROSECUTION ▼

101st Dismissal Letter - 2017

101st Dismissal Letter - 2017

101st Dismissal Letter - 2017

101st Dismissal Letter - 2017

101st Dismissal Letter - 2017

101st Dismissal Letter - 2017

101st Dismissal Letter - 2017

101st Dismissal Letter - 2017

101st Dismissal Letter - 2017

Judicial Officer
WILLIAMS, STACI

Hearing Time
9:00 AM

Financial

CNR Operations, LLC

Total Financial Assessment	\$364.00
Total Payments and Credits	\$364.00

8/1/2018	Transaction	\$292.00
	Assessment	

8/1/2018	CREDIT CARD	Receipt #	CNR	(\$292.00)
	- TEXFILE	49031-	Operations,	
	(DC)	2018-DCLK	LLC	

8/10/2018	Transaction	\$72.00
	Assessment	

8/10/2018	CREDIT CARD	Receipt #	CNR	(\$72.00)
	- TEXFILE	51711-	Operations,	
	(DC)	2018-DCLK	LLC	

Documents

PETITION

Civil Case Information Sheet.pdf

101st Dismissal Letter - 2017

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101st Dismissal Letter - 2017

101st Dismissal Letter - 2017

101st Dismissal Letter - 2017

REFERENCES

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• 2002 2002 5.1.2 2002 2002 5.1.2 2002 2002 5.1.2

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1. 2006-2007-1-10000 2006-2007-2-10000 2006-2007-3-10000

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ORIGINAL ANSWER